

**AGENDA FOR THE THIRTEENTH SESSION
OF THE IMSO ADVISORY COMMITTEE
15 – 16 November 2005**

Opening of the Meeting

1. Approval of Agenda
 2. Outcome of the Twelfth Session of the Advisory Committee
 3. Reference Public Services Agreement
 4. Budget Apportionment between Service Providers
 5. Verification and Evaluation Procedures for the Independent Group of Experts
 6. Oversight Functions and Responsibilities
 7. Draft Budget for 2006
 8. Any Other Business
 9. Approval of Report
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LIST OF DOCUMENTS

AC/13/1	Draft Agenda for the Thirteenth Session of the IMSO Advisory Committee
AC/13/2	Report of the Twelfth Session of the Advisory Committee
AC/13/3	Reference Public Services Agreement
AC/13/3.1	Procedures for Compliance, submitted by United States
AC/13/4	Budget Apportionment Scheme
AC/13/5	Independent Group of Experts: Terms of Reference, Verification and Evaluation Procedures
AC/13/6	Oversight Functions and Responsibilities
AC/13/7/REV/1	Financial and Secretariat Matters: Report on Financial Accounts for 2005 and Draft Budget for 2006

INFORMATION DOCUMENTS

AC/13/INF/1	Provisional List of Documents
AC/13/INF/2	Amendments to IMO Resolution A.888
AC/13/INF/3	Provisional List of Participants

LIST OF PARTICIPANTS

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JAPAN	Mr Shuji Yamaguchi First Secretary Embassy of Japan, London
LIBERIA	Captain Armett E. Hill Acting Permanent Representative of the Republic of Liberia to IMO
MALTA	Ms Anne Marie Sciberras Malta High Commission, London
MARSHALL ISLANDS	Mr David J. F. Bruce Permanent Maritime Representative of the Republic of the Marshall Islands to IMO.
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Director

Mr Andy Fuller
Head of Technical Services

Ms Jenny Ray
Head of Administrative Services

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Mr James Smalley

Mr Christophe Lerck

TERMS OF REFERENCE FOR THE ADVISORY COMMITTEE

1 ADVISORY COMMITTEE

1.1 The Advisory Committee is established by the Assembly on a permanent basis, to carry out, on behalf of and under delegation from the Assembly, the tasks set forth in these Terms of Reference.

1.2 The Advisory Committee shall consist of representatives from the fifteen Parties, elected by each Session of the Assembly, taking into account the need for full geographical representation, and for continuity of membership.

1.3 The Committee shall appoint its own Chairman.

2 TASKS

2.1 The Committee shall consult with the Director and give its guidance and advice to the Director on the following matters:

- (a) preparation by the Director of the annual budget of the Secretariat, and accounting and auditing procedures;
- (b) any proposed action by the Director to convene an extraordinary general meeting of the Holdings Company or initiate arbitration or judicial proceedings in the event of any alleged breach by the Companies of their obligations under the PSA, provided that if the Committee so requests, or the Director so decides, the Director shall convene an extraordinary session of the Assembly to authorize appropriate enforcement action;
- (c) determination by the Director of the staffing structure of the Secretariat, and standard terms of employment of Secretariat staff, and the Staff Rules;
- (d) any other matters delegated by the Assembly; and
- (e) any other matters on which the Director identifies a need to consult the Advisory Committee on a case-by-case basis.

2.2 The Committee shall approve the regular report of IMSO to the IMO envisaged in Article 4.3 of the Public Service Agreement (PSA), prepared and submitted by the IMSO Director.

2.3 The Committee shall agree the annual budget and resolve any issues regarding the annual budget which may be submitted by the Company.

2.4 The Committee shall review the Audited Annual Financial Statements of the Organization, and submit a report thereon to the Assembly.

3 **WORKING METHODS**

3.1 The Rules of Procedure for the Assembly shall *mutatis mutandi* apply to the Advisory Committee.

3.2 The Committee shall determine its own working procedures, including the frequency and location of its meetings.

3.3 The Director is requested to provide such practical assistance to the Committee as may be necessary. In arranging its work and holding meetings, the Committee shall endeavour to minimise costs to the extent possible.

4 **COSTS**

Costs associated with all travel, accommodation and subsistence of the members of the Committee at their meetings shall be borne by their respective Parties.

5 **REPORTING TO PARTIES AND TO THE ASSEMBLY**

On behalf of the Committee, the Chairman shall, through the Director, send regular reports to Parties on the results of its work, and shall also submit a report thereon to the Assembly.

**U.S. STATE DEPARTMENT LEGAL ANALYSIS OF THE IMSO DIRECTOR'S
ANALYSIS OF THE RELATIONSHIP BETWEEN IMO AND IMSO**

1. The U.S. Department of State has analyzed the Director's legal analysis and respectfully disagrees with the conclusions reached.

2. With respect to IMSO's authority, Article 11 of the IMSO Convention explicitly authorizes IMSO to carry out oversight of GMDSS providers. However, the United States believes that Articles 1(a), 2 and 28 of the IMO Convention implicitly authorizes the IMO to also carry out such oversight functions, through the MSC. Therefore, companies may appeal to either IMSO or the IMO for such an oversight function.

3. With respect to immunity of the member states of IMSO and of the IMO for actions of those organizations, the United States believes that the situations are very similar. While Article 11 of the IMSO Convention makes clear that the member states are not liable for the actions of IMSO, the absence of such a provision with respect to the IMO in the IMO Convention does not mean (as asserted by the Director) that the member states would consequently be liable for any oversight actions of the IMO. In the case of both IMSO and the IMO, the immunity of the member states for the actions of either organization would be determined under general principles of sovereign immunity. The United States believes that member states are not likely to be held liable for the oversight actions of either organization under general principles of sovereign immunity.

4. With respect to the immunities of both IMSO and the IMO for their own actions, the United States believes that the situations are very similar. Under the IMO Convention, the IMO's immunity is governed by the UN's General Convention on the Privileges and Immunities of the Specialized Agencies (although the U.S. is not a party to that Convention). The IMO Convention, article 65 and appendix II, requires member states to accord privileges and immunities to it. The situation with respect to IMSO is similar.

5. Under the US legal system, immunity for international organizations is provided by an Executive Branch designation under the International Organizations Immunity Act. The predecessor entities of IMO and IMSO were duly designated by Executive Order and therefore their Secretariats had immunity, but unfortunately, the relevant designation was not changed when each of these organizations changed their names. So the immunity situation of both IMSO and the IMO under U.S. law is currently unclear.

ARRANGEMENTS FOR THE DEVELOPMENT, AGREEMENT AND APPORTIONMENT OF THE ORGANIZATION'S BUDGET

1 General Principles

1.1 Article 11 of the Convention on the International Mobile Satellite Organization, as amended, provides that:

“(1) ... the costs associated with the following shall be paid by the Providers:

(a) the operation of the Directorate;

(b) the holding of Assembly sessions and meetings of its subsidiary bodies; and

(c) the implementation of measures taken by the Organization in accordance with Article 4 to ensure that the Provider carries out its obligation of providing maritime mobile satellite communications services for the GMDSS.

(2) The costs defined in paragraph (1) shall be apportioned between all Providers according to rules set up by the Assembly.”

1.2 The Reference Public Services Agreement, which is to be signed by every Provider, implements the provisions of the Convention as follows:

“10.1 The Company shall contribute to the costs of the Organization.

10.2 The Company shall pay to the Organization annually in pounds sterling, a proportion of the total budget of the Organization. The budget will be agreed and approved by the Assembly. The approved budget will be apportioned between all Companies with which the Organization has concluded a Public Services Agreement, in accordance with the formula adopted by the Assembly.

10.3 The Organization will conduct informal consultations with the Company when preparing its budget.”

1.3 The budget should be developed by the Director and agreed annually by the Advisory Committee, on behalf of the Assembly.

1.4 The budget should be developed on a three-year rolling basis. The budget for year one should be as accurate as possible and agreed by the Advisory Committee for implementation by the Director. The budget for year two should be sufficiently accurate to provide a clear indication of the level of costs that may be expected in year two. The budget for year three should be indicative.

1.5 The costs of the Organization shall be recovered from the Provider(s) in the form of a Fixed Annual Fee, payable in advance. The level of this Fee shall be proposed by the Director and agreed by the Advisory Committee on an annual basis.

1.6 The Fixed Annual Fee shall be set at a sufficient level for recovery of the Organization's costs in relation to GMDSS oversight plus any prudent need for contingencies. The Fixed Annual Fee charged to Providers of satellite services for the GMDSS shall not take account of the costs of any other business the Organization might undertake.

1.7 If, in future, the Organization undertakes the oversight of any other non-GMDSS services, at the request of IMO or otherwise, the costs of such other oversight services shall be separately identified in the Organization's budget and charged only to Providers of the services concerned. In that case, Headquarters, Staff and other fixed costs shall be apportioned between all the various lines of business.

1.8 The costs of verification and evaluation, within the context of IMO resolution A.888(21), of the technical capabilities and implementation of GMDSS services by potential new providers, shall not form part of the regular budget of the Organization. The full cost of such verification and evaluation, including the cost of any Group of Experts convened to advise the Director in respect of an application, shall be paid by the applicant in the form of a fixed fee, payable in advance. The level of the Fixed Verification and Evaluation Fee shall be proposed by the Director and approved by the Advisory Committee from time to time.

2 Budget Development

2.1 The Director should ensure that the proposed budget properly identifies and separates the costs of GMDSS oversight from those of any other business the Organization may undertake.

2.2 The Director should develop detailed budget proposals for the next financial year (year one), plus indicative budgets for the following two years (years two and three), during the third quarter of each calendar year. The indicative budget for year two should be sufficiently accurate to allow for realistic financial planning by the Organization and the Providers. The budget for year three should be indicative only.

2.3 In preparing the budget, the Director should consult individually and informally with each Provider, generally during the month of September.

3 Budget Agreement

3.1 The Director should present the proposed budget for the following year to the Advisory Committee for agreement, plus the indicative budgets for the following two years for information, at a meeting of the Advisory Committee to be held during October of each year.

4 Apportionment

4.1 The costs shall be apportioned between all Providers that are subject to oversight by the Organization and for whom a Public Services Agreement is in force at the beginning of the financial year.

4.2 Each Provider shall pay:

- .1 an equal share of the operational budget for the type of oversight being provided;
- .2 an equal share of the cross functional overheads; and
- .3 an equal share of the contingency requirement.

5 Fixed Annual Fees

5.1 Each year, following agreement of the budget, the Director will propose, for approval at the same session of the Advisory Committee, the level of Fixed Annual Fee to be paid by each provider subject to oversight by the Organization in year one, and the indicative level of Fixed Annual Fee expected to be levied in year two.

5.2 The level of Fixed Annual Fee shall be kept as low as is reasonable. It shall be sufficient to ensure that the financial needs of the Organization are always met, taking account of the agreed budget for the next year.

5.3 The level of Fixed Annual Fee should be proposed by the Director and approved by the Advisory Committee, taking account of the agreed budget for the year, any prudent need for contingencies, and the number of Providers for which signed Public Services Agreements are in force.

5.4 The Fixed Annual Fee shall be payable in advance by each recognised provider. The Organization shall require payment in full within 30 days of the date of invoice. Invoices shall not be sent out more than 60 days before the first day of the period to which the invoice relates. The Director may, at his discretion, permit any provider to pay quarterly in advance on the same terms, except that the whole outstanding Fixed Annual Fee shall become payable immediately if a provider does not pay any invoiced amount within the 30 day period allowed. The Organization may charge interest at a rate of 2 per cent above the Bank of England Base Rate, in accordance with normal commercial practice, on any invoiced sums outstanding beyond the 30 days allowed.

6 Contingency Fund

6.1 The annual budget shall include an allowance for contingencies. The allowance for contingencies shall normally be 1% of the total non-contingency budget for the year, which shall be added to the total financial requirements of the Organization annually. The percentage should be proposed by the Director and agreed by the Advisory Committee as part of the budget setting exercise each year, taking account of the remaining balance in the Fund and the history of the Fund's use.

6.2 The Contingency Fund should accumulate in a separate account. Any amount remaining unspent should be retained by the Organization and not be returned to the providers at the end of the year.

6.3 The Director should report and expenditure from the Contingency Fund to the Advisory Committee at its next regular session.

7 Legal Costs

7.1 Each provider, at the time of signing a Public Services Agreement and as a condition of receiving a Letter of Compliance from the Organization, shall provide the Organization with an indemnity against any and all costs incurred by the Organization associated with:

.1 the Company referring any issue to the Assembly for resolution under the terms of paragraph 7.10 of the PSA; or

.2 the Company or the Organization submitting to arbitration any dispute arising out of or in relation to the provisions of the PSA.

7.2 The Company may provide such indemnity through a suitable Legal Insurance policy, or through a legally binding instrument of indemnity provided by a government, or by any other means accepted by the Organization.

7.3 The acceptance of a particular indemnity offered by any Provider shall be subject to the agreement of the Organization as to its suitability and sufficiency.

7.4 The Assembly shall decide and keep under review the amount of the indemnity required. In deciding the amount of the indemnity the Assembly should take into account the full prevailing cost to the Organization of either:

.1 a 2 day Extraordinary Session of the Assembly, including interpretation, held at or near the Headquarters of the Organization in London; or

.2 a 10 day arbitration proceeding under the terms of section 8 of the Public Services Agreement,

whichever is the greater.

8 New Providers

8.1 The costs of verification and evaluation, within the context of IMO resolution A.888(21), of the technical and operational capabilities of, and implementation of GMDSS services by potential new providers shall not form part of the regular budget of the Organization. Such costs, including the cost of any Group of Experts convened to advise the Director in respect of an application, shall be charged to the applicant Provider concerned, in the form of a fixed fee. The level of the Verification and Evaluation Fee shall be proposed by the Director and approved by the Advisory Committee from time to time.

8.2 The one-time Verification and Evaluation Fee shall be received by the Organization before the process of verification and evaluation is begun.

8.2 When a new Provider signs a Public Services Agreement with the Organization, the Fixed Annual Fee paid by that provider, during that year only, shall be reduced in proportion to the number of days in that financial year that have already passed.

9 Budgetary Reporting

9.1 During the first quarter of each calendar year the Director shall report to the Advisory Committee on actual expenditure compared with the agreed budget for the previous year.

9.2 The Director shall report on the budget to each regular two-yearly session of the Assembly.

9.3 The Director may report on expenditure versus budget to the Advisory Committee at any time. The Budget shall be a permanent item on the agenda of the Advisory Committee.

9.4 The Organization's financial accounts shall be subject to independent audit each year and the Auditors Reports shall be provided to the Advisory Committee and the Assembly. The Auditors shall be appointed by the Assembly.

**FINAL DRAFT REFERENCE
PUBLIC SERVICES AGREEMENT
BETWEEN
THE INTERNATIONAL MOBILE SATELLITE ORGANIZATION
AND
(THE COMPANY)**

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**PUBLIC SERVICES AGREEMENT
BETWEEN
THE INTERNATIONAL MOBILE SATELLITE ORGANIZATION
AND
(THE COMPANY)**

PUBLIC SERVICES AGREEMENT made on _____ day of _____ 20____
between:

- (1) **THE INTERNATIONAL MOBILE SATELLITE ORGANIZATION** (“the Organization”), an intergovernmental organization established under the Convention on the International Mobile Satellite Organization which entered into force on 16 July 1979, as amended, with its headquarters at 99 City Road, London, EC1Y 1AX;
- (2) [.....], (“the Company”), a company incorporated under the law of [....], with its registered office at [....],

WHEREAS:

- (A) The recognition of maritime mobile satellite systems for use in the GMDSS is based on:
 - 1. the Convention on the International Mobile Satellite Organization (IMSO) 1979, as amended;
 - 2. the International Convention for the Safety of Life at Sea, 1974 (SOLAS), as amended;
 - 3. IMO Assembly Resolution A.888(21), as amended; and
 - [4. IMO MSC Resolution 1077, as amended; *]
- (B) The Company has been recognised by the International Mobile Satellite Organization (IMSO) to participate in the GMDSS;

THIS AGREEMENT sets out the obligations of the Company in relation to the provision of GMDSS services and the rights of the Organization to oversee and ensure the observance by the Company of those obligations within the legal framework established by IMO.

* may be incorporated into the text of revised Resolution A.888(21)

IT IS THEREFORE AGREED AS FOLLOWS:

1 INTERPRETATION

1.1 **Definitions**

In this Agreement the following terms shall have the following meanings:

Advisory Committee means the Advisory Committee elected by the Assembly;

Assembly means the Assembly of Parties referred to in the Convention;

Board means the Board of Directors the Company;

Convention means the Convention on the International Mobile Satellite Organization which entered into force on 16 July 1979, as amended;

Distress and safety communications means ship-to-shore, shore-to-ship and ship-to-ship distress alerts, search and rescue coordinating communications, and maritime safety information and other distress and safety related communications;

Force Majeure means any act, event, condition or other case of a compelling nature which is not reasonably within the control of the Company or the Organization;

General radiocommunications means operational and public correspondence traffic, other than distress, urgency and safety messages, conducted by radio, as defined in IMO MSC/Circ.1038;

GMDSS means the Global Maritime Distress and Safety System as established by the International Maritime Organization;

GMDSS Service means a specific communication service, provided by the Company and recognised by IMSO as meeting one or more of the functional requirements of Chapter IV Regulation 4 of the SOLAS Convention;

IMO means the International Maritime Organization;

ITU means the International Telecommunication Union;

Maritime safety information means navigational and meteorological warnings, meteorological forecasts and other urgent safety related messages broadcast to ships;

Public Service Obligations means the obligations of the Company set out in Clause 2;

Party means a State for which the Convention has entered into force;

Satellites means any or all of the Satellites owned, leased or operated by the Company;

SOLAS Convention means the International Convention for the Safety of Life at Sea, 1974, as amended;

Space Segment means the Satellites, and the tracking, telemetry, command, control, monitoring and related facilities and equipment required to support the operation of the Satellites.

1.2 **Headings**

Headings are inserted for convenience only and shall not affect the interpretation of this Agreement.

2 **PUBLIC SERVICE OBLIGATION**

2.1 **Provision of GMDSS Services**

2.1.1 Without prejudice to Clause 3, the Company assumes the obligation to provide and ensure the continuity of maritime satellite distress and safety communications services which it provides for the GMDSS in accordance with:

- IMO Resolution A.888(21), as amended,
- the Notice of Recognition issued by IMSO and dated [*date*] (Annex 1); and
- this Agreement.

2.1.2 To this end, on the basis of an evaluation of the services by an independent Group of Experts appointed by IMSO, the Organization shall issue to the Company a Letter of Compliance (Annex 2) in respect of those services which the Organization has recognized in the Notice of Recognition.

2.1.3 The Company shall continue to provide services or systems to enable the maritime distress, safety and general radiocommunications services and systems recognised by IMSO and included in the Notice of Recognition, to be available to ships at all times.

2.1.4 The Company may only discontinue provision of an approved GMDSS service with the prior written agreement of the Organization. The Organization shall normally require not less than five years notice of intention to terminate the provision of any recognised GMDSS service.

- 2.2 The Organization shall conduct oversight of the GMDSS services on a continuing basis.

3 INTERNATIONAL STANDARDS AND REGULATIONS

The Company shall observe the relevant mandatory international instruments, and take into account those recommendations, resolutions and procedures of IMO and ITU which are of a recommendatory nature, insofar as they relate to the provision of GMDSS services.

4 CHARGING POLICY

- 4.1 The Company shall abide by the charging policy established by IMO in Resolution A.707(17), as amended, for distress and safety messages, and shall observe relevant ITU regulations and IMO recommendations and resolutions in existence on the date of this Agreement.
- 4.2 The Organization shall consult with the Company regarding any proposed changes to the charging policy.

5 INFORMATION AND COOPERATION

- 5.1 The Organization shall be entitled to be supplied with all reasonable information pertaining to the Company's ability to provide and provision of GMDSS services, including engineering and related advice, assistance and studies, in such form and with such frequency as is required to enable the Organization to review the performance by the Company of the Public Service Obligations
- 5.2 The Organization shall provide IMO with regular reports, at least once yearly, on the performance by the Company of its obligations under Clause 2.1.

- 5.3 The Organization and the Company hereby undertake to keep confidential, and to ensure that their officers, employees, agents and professional and other advisers keep confidential, any information which the Organization has acquired pursuant to Clause 5.1 and which is designated by the Company as being confidential, or which the Company has acquired pursuant to Clause 10, or otherwise, and shall not disclose to any third party any such information. If the Organization distributes any such confidential information to Parties, it shall obtain the prior consent of the Company and require the Parties to take appropriate measures to safeguard the confidentiality of such information, subject to national laws and regulations.

6 CONSULTATION

- 6.1 The Organization and the Company shall consult and cooperate regularly, or at the request of any of them at any time, with respect to the implementation of this Agreement. For that purpose, a Public Services Committee shall be established jointly by the Organization and the Company composed of the Director of the Organization, a responsible Director of the Company personally nominated by the Chief Executive Officer of the Company and one other non-executive Director of the Company. The Director and the Company shall agree upon written procedures for functioning of the Committee.
- 6.2 The Company shall consult the Organization, as necessary, with respect to the implementation of any amendments or modifications made to the SOLAS Convention relating to the standards, services and systems referred to in Clause 2.1.
- 6.3 The Company shall consult the Organization, as appropriate, with respect to any proposed change by the Company in the specification of standards, services and systems that relates to the Company's provisions of the capabilities specified in Clause 2.1, before the implementation of the proposed change, and shall observe any recommendation or decision made by the Organization. The consultations shall also relate to any changes that may be needed to the technical and operational requirements of any of those standards, services and systems to ensure that the Company can comply fully with its obligations under Clause 2.1.
- 6.4 Nothing in this Agreement shall prevent the Organization or the Company from also consulting with any other relevant body regarding such changes.

- 6.5 Unless otherwise decided by the Assembly or its subsidiary body, the Company shall have the right to attend as an Observer and make representations to the Assembly and its subsidiary body, as appropriate, on issues pertaining to this Agreement.

7 COMPLIANCE

- 7.1 Notwithstanding the provisions of Clause 6.1, the Organization and the Company agree each to use reasonable efforts to resolve informally and expeditiously any disagreement or dispute about the Company's compliance with its obligations under this Agreement.
- 7.2 If the Organization determines that the Company is or is likely to be in default in complying with any such obligation, and is unable to resolve the matter to its satisfaction through the consultation referred to in Clause 6.1 or through the informal means referred to in Clause 7.1, the Organization shall issue the Company with a Provisional Letter of Non-compliance.
- 7.3 The Provisional Letter of Non-compliance shall, *inter alia*, state the exact nature of the potential non-compliance, what action the Company can take to remedy the matter and the time within which the Organization requires the matter to be resolved. The time allowed for resolution may depend on the nature of the non-compliance and will take into account any discussions which have taken place with the Company on the issue.
- 7.4 The Provisional Letter of Non-compliance is confidential between the Organization and the Company.
- 7.5 After issuing a Provisional Letter of Non-compliance, the Organization may:
- (a) notify the Company, in writing, that it wishes to meet with management representatives of the Company to discuss the potential non-compliance, in which case the Company shall agree to such a meeting, at the mutual convenience of the parties, within a reasonable time under the circumstances, not to exceed two (2) weeks from the date of the notice; or
 - (b) notify the Company, in writing, that it wishes to meet with the Board to discuss the potential non-compliance, in which case the Company shall agree to such a meeting at the mutual convenience of the parties, within a reasonable time under the circumstances, not to exceed four (4) weeks from the date of notice.

- 7.6 If the issue has not been resolved to the satisfaction of the Organization after a period of time appropriate to the nature of the potential non-compliance, the Organization shall issue the Company with a Letter of Non-compliance.
- 7.7 The Letter of Non-compliance shall, *inter alia*, state the exact nature of the non-compliance, what action the Company can take to remedy the matter and the time within which the Organization requires the matter to be resolved. The time allowed for resolution may depend on the nature of the non-compliance and will take into account any discussions which have taken place with the Company on the issue.
- 7.8 The Letter of Non-compliance may include an instruction that the Company rectifies the acts or omissions which have caused the non-compliance to occur.
- 7.9 If the Company does not rectify the non-compliance to the satisfaction of the Organization within the time allowed by the Letter of Non-compliance, the Organization will decide whether recognition of the Company's GMDSS services should be made conditional, suspended or withdrawn.
- 7.10 The Company may, at any time following the issue of a Letter of Non-compliance, refer the matter to the Assembly for resolution. The Director may convene an Extraordinary Session of the Assembly for this purpose as soon as possible and in any case not later than three months after the request by the Company.
- 7.11 Any decision by the Assembly in this respect shall be final and binding on both the Organization and the Company, as appropriate. The Organization and the Company shall implement the decision of the Assembly without delay.
- 7.12 If the Company does not implement the decision of the Assembly to the satisfaction of the Organization, the Organization shall withdraw recognition of the Company's GMDSS services.
- 7.13 If the Company takes sufficient action during this process to rectify the non-compliance, the Organization may withdraw the Provisional Letter of Non-compliance or Letter of Non-compliance at any time.
- 7.14 The Organization will inform the Secretary-General of IMO of any decision to make conditional, suspend or withdraw recognition of any GMDSS satellite services.

8 ARBITRATION

- 8.1 The Organization and the Company may submit to arbitration any dispute arising out of or in relation to the provisions of this Agreement.
- 8.2 Unless otherwise agreed in writing between the Organization and the Company, any such dispute shall be finally settled by arbitration under the Rules of the United Nations Commission on International Trade Law (UNCITRAL) as in force at the time. The appointing authority shall be the London Court of International Arbitration (LCIA). The number of arbitrators will be one unless otherwise agreed by the Organization and the Company. The place of arbitration shall be London, England, and the language of the arbitration shall be English.
- 8.3 The decision of the Arbitrator shall be binding upon the Organization and the Company.
- 8.4 The Organization and the Company shall immediately implement any decision of the Arbitrator in relation to the provisions of this Agreement.
- 8.5 Any failure by the Company to immediately implement the decisions of the Arbitrator, either in whole or in part, shall constitute a gross breach of this Agreement and shall result in immediate withdrawal of recognition of the GMDSS services provided by the Company.
- 8.6 The Organization and the Company shall each bear their own costs in relation to any arbitration proceedings.
- 8.7 The Organization shall inform the Secretary-General of IMO if any matter related to the provision of GMDSS services is sent to arbitration and of any subsequent decision by the Arbitrator.

9 ENFORCEMENT

Any failure to rectify a non-compliance to the satisfaction of the Organization within the time allowed by the Letter of Non-compliance, or any failure by the Company to immediately implement the decisions of the Arbitrator, either in whole or in part shall immediately result in the Letter of Compliance referred to in Clause 2.1.2 being amended or withdrawn accordingly.

10 COSTS OF THE ORGANIZATION

- 10.1 The Company shall contribute to the costs of the Organization.
- 10.2 The Company shall pay to the Organization annually in pounds sterling, a proportion of the total budget of the Organization. The budget will be agreed and approved by the Assembly. The approved budget will be apportioned between all Companies with which the Organization has concluded a Public Services Agreement, in accordance with the formula adopted by the Assembly (Annex 3).
- 10.3 The Organization will conduct informal consultations with the Company when preparing its budget.
- 10.4 The Company shall indemnify the Organization against any and all costs associated with:
- .1 the Company referring any issue to the Assembly for resolution under the terms of paragraph 7.10 of the PSA; or
 - .2 the Company or the Organization submitting to arbitration any dispute arising out of or in relation to the provisions of the PSA.
- 10.5 The Company may provide such indemnity through a suitable Legal Insurance policy, or through a legally binding instrument of indemnity provided by a government, or by any other means accepted by the Organization. The acceptance of a particular indemnity offered by any Company shall be subject to the agreement of the Organization as to its suitability and sufficiency.

11 ASSIGNMENT

- 11.1 Otherwise than in the case of a reconstruction of the Company, or assignment to a subsidiary or to its holding company or to a subsidiary of that holding company, as those expressions are used in the UK Companies Act 1985, as amended, the Company may not assign any of its rights or obligations under this Agreement in whole or in part without the prior approval in writing of the Organization.
- 11.2 The Company shall not assign to any other entity any right to wind up the Company under any circumstances unless:
- .1 that other entity has entered into a binding agreement with the Organization that secures the continuity of GMDSS services, to the satisfaction of the Organization; and

.2 the Company has received the consent in writing of the Organization.

- 11.3 The Company warrants that all existing contracts or other commitments that assign the right to wind up the Company, or which could be construed as assigning such rights, have been disclosed to the Organization.

12 VOLUNTARY WINDING UP

In order to secure the continuity of the GMDSS services provided by the Company, any decision to voluntarily wind up the Company shall take effect only with the consent in writing of the Organization which shall not be withheld or delayed unless the GMDSS services are jeopardised.

13 WAIVER

No waiver by the Organization, or the Company or failure to perform any provision of this Agreement shall operate or be construed as a waiver with respect to any other or further failure whether of a like or different character.

14 SEVERANCE

If any provision of this Agreement is finally determined to be, or becomes, invalid, illegal or unenforceable, then such provision shall, so far as invalid or unenforceable, be given no effect and shall be deemed not to be included in this Agreement, but without affecting or invalidating the remaining provisions of this Agreement.

15 FORCE MAJEURE

No delay or failure by the Organization or the Company in performing any of their obligations referred to in this Agreement shall constitute a breach of this Agreement nor give rise to any claim or action against either of them to the extent that such delay or failure is caused by an event of *force majeure*. If either the Organization or the Company is unable to carry out any of such obligations by reason of an event of *force majeure*, it shall promptly advise the other thereof in writing and shall use its best endeavours to resume the performance of its obligations so affected.

16 WARRANTIES AND REPRESENTATIONS

- 16.1 Each party represents and warrants to the others that it has full power and authority to enter into, undertake and perform its obligations set out in this Agreement.
- 16.2 The Organization undertakes that it will be consistent and non-discriminatory in the Terms and Conditions it agrees from time to time with other parties in relation to general provisions, common principles and appropriate obligations.

17 NOTICES

- 17.1 Any notice or other communication to be given under this Agreement shall be in writing and shall be sent to the party concerned by facsimile transmission as follows:

For the International Mobile Satellite Organization:

To: The Director
International Mobile Satellite Organization
...

Facsimile number: +44 207 728 1172

For the Company: *[insert name, address and facsimile number]*

- 17.2 Any party to this Agreement may change the address or the name of the person for whose attention notices are to be addressed by serving a notice on the others in accordance with this clause.
- 17.3 Notices served in accordance with Clause 17.1 shall be deemed to have been served two business days after the facsimile was transmitted to the addressee.

18 AMENDMENTS

This Agreement may be amended only by an instrument in writing signed by duly authorized representatives of the Organization and the Company.

19 TERMINATION

This Agreement may be terminated:

- (a) by written agreement between the Organization and the Company;
or
- (b) by written notice given by the Organization to the Company; or
- (c) by written notice of not less than five years given by the Company to the Organization.

20 RIGHTS OF THIRD PARTIES

A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right of a party to this Agreement to enforce any term of the Agreement for and on behalf of such third party where applicable.

21 GOVERNING LAW

This Agreement shall be governed by and construed in accordance with English law.

22 ENTIRE AGREEMENT

The entire agreement and understanding between the Organization, and the Company with respect to the subject matter hereof, is set out in this Agreement.

AS WITNESS this Agreement has been executed the day and year first before written.

Signed on behalf of:

**THE INTERNATIONAL MOBILE
SATELLITE ORGANIZATION**

Director

Signed on behalf of:

(THE COMPANY)

Chief Executive Officer

Annex 1**D R A F T****NOTICE OF RECOGNITION**

Recognition of maritime mobile-satellite services provided by
[the Company]
in the Global Maritime Distress and Safety System (GMDSS)

Whereas:

The recognition of maritime mobile satellite systems for use in the GMDSS is based on:

1. the Convention on the International Mobile Satellite Organization (IMSO) 1979, as amended;
2. the International Convention for the Safety of Life at Sea, 1974 (SOLAS), as amended;
3. IMO Assembly Resolution A.888(21), as amended; and
4. IMO MSC Resolution 1077, as amended;

The Government of [*name of country*] has made an application to the International Maritime Organization (IMO) in respect of certain maritime mobile satellite communication services (the services); and

The Maritime Safety Committee of IMO, at its [*number in words*] session, has decided that there are no over-arching policy issues that might affect a decision to include the services in the Global Maritime Distress and Safety System (GMDSS) and invited the International Mobile Satellite Organization (IMSO) to consider the services with a view to their inclusion in the GMDSS.

The International Mobile Satellite Organization has evaluated and verified the services provided by [*Name of Company*], of [*Address of Company*], registered in [*Location*] with registered number [*number*] in relation to the relevant mandatory international instruments, and the recommendations, resolutions and procedures of IMO and the International Telecommunications Union (ITU) which are of a recommendatory nature, insofar as they relate to the provision of GMDSS services; and

HEREBY RECOGNIZES the Company identified in this Notice as meeting the requirements of IMSO for the provision of maritime mobile satellite services for the GMDSS.

Subject to the terms of a valid Public Services Agreement between IMSO and the Company, IMSO may issue a Letter of Compliance for those services which, from time to time, meet the relevant mandatory international instruments, and the recommendations, resolutions and procedures of IMO and the International Telecommunications Union (ITU) which are of a recommendatory nature, insofar as they relate to the provision of GMDSS services.

Signed

DIRECTOR

Annex 2

D R A F T**LETTER OF COMPLIANCE****Maritime mobile-satellite services provided by****[the Company]****in the Global Maritime Distress and Safety System (GMDSS)**

Whereas the International Mobile Satellite Organization (IMSO) has evaluated and verified the services provided by [*Name of Company*], of [*Address of Company*], registered in [*Location*] with registered number [*number*] and has issued the Company with a Notice of Recognition dated [*date*] and concluded a Public Services Agreement between the Organization and the Company dated [*date*];

in accordance with Clause 2.1.2 of that Public Services Agreement IMSO hereby confirms that the services listed in the annex to this letter comply with the technical and operational requirements for participation in the GMDSS set out in IMO Assembly resolution A.888(21), as amended.

The services are subject to continuing oversight by IMSO in accordance with the Rules and Arrangements set out in the Public Services Agreement (PSA) concluded between IMSO and the Company (Clause 2.4 of Resolution A.888(21), as amended, refers). In particular, the scope and validity of this Letter of Compliance is subject to the provisions of Section 7 of the PSA relating to Compliance.

Signed

DIRECTOR

Annex 2

Attachment

**SERVICES COMPLYING WITH THE TECHNICAL AND OPERATIONAL
REQUIREMENTS OF IMO ASSEMBLY RESOLUTION A.888(21), AS AMENDED**

Provider:

Name:

Address:.....

.....

.....

.....

Registration Number:.....

Sponsoring Government:.....

Name or identification of Service	Functional Requirement(s) (SOLAS Chapter IV regulation 4)

On behalf of the International Mobile Satellite Organization (IMSO)

Signature:

Name:

Date:

D R A F T

Annex 3

DECISION OF THE IMSO ASSEMBLY
adopted on [date]

BUDGETARY APPROVAL PROCEDURES AND APPORTIONMENT OF COSTS

The text of this resolution shall, inter alia:

1. *Incorporate the existing procedures for approving the Annual Budget of the Organization, modified as may be necessary to take account of the text of the amended Convention (when so amended)*
2. *Include statements concerning the Organization's policies on separation of the costs of GMDSS oversight from the costs of any other approved functions that may be undertaken by the Organization or Directorate, the avoidance of cross-subsidisation between programmes, and apportionment of Headquarters and staff costs between programmes.*
3. *Set out clearly the principles and method adopted by the Assembly for apportioning costs between multiple providers of GMDSS services.*

to be inserted when approved by the Assembly

INDEPENDENT GROUP OF EXPERTS
TERMS OF REFERENCE, VERIFICATION AND EVALUATION PROCEDURES

1 Purpose

At the invitation of the Director of IMSO, to verify and evaluate information provided concerning a specific maritime mobile satellite system offered for use in the GMDSS, in relation to the relevant requirements and recommendations of IMO, ITU and IMSO, and advise the Director of IMSO accordingly.

2 Composition

2.1 The Group of Experts shall normally consist of no more than three independent experts, chosen on a case-by-case basis from a list of named experts nominated by IMSO Member States.

2.2 Nominations of named experts may be submitted by Member States, supported by a brief *Curriculum Vitae*, and reviewed by the Advisory Committee for suitability before their names are added to the list of approved experts.

2.3 The Director shall maintain a list of experts nominated by IMSO Member States. Experts should have:

considerable practical operational and technical experience of maritime mobile satellite systems and the GMDSS; and
knowledge and understanding of IMO, ITU and IMSO procedures, standards and recommendations.

2.4 The Director will normally appoint a different Group of Experts for each verification and evaluation exercise, choosing particularly those who demonstrably have no interest in the applicant Company or the specific application they will be considering.

2.5 When selecting a Group of Experts for a particular evaluation exercise, the Director will take into consideration the need for each expert to come from a different country or region, and seek to ensure that members of the Group have no conflicting interests and, in particular, do not have any connection with either the applicant company or the sponsoring government.

2.6 The IMO Secretariat and the Member Government sponsoring the application shall have the right to join the Group as Observers and make representations to the Assembly and its subsidiary body, as appropriate, on matters relating to the verification and evaluation exercise.

2.7 The Director will organise the work of the Group and provide secretariat services.

3 Method of Work

3.1 The Group of Experts will be convened, when required, by the Director and will normally work by correspondence, preferably by e-mail.

3.2 Once convened, a particular Group of Experts will continue in existence until the Organization has issued the applicant Company with a Notice of Recognition and Letter of Compliance and a Public Services Agreement is in force for the services concerned. That particular Group will then be disbanded.

3.3 The Group may elect a Co-ordinator from among its members.

3.4 The Group will be provided with information by the Member Government which is sponsoring the application. The package of information should be sufficient to enable the Group to evaluate and verify that the services proposed for inclusion in the GMDSS comply fully with the relevant requirements and recommendations of IMO, ITU and IMSO, as appropriate. Requests for further information or explanation should be sent to the Director, who will normally invite the sponsoring Government to provide the data requested.

3.5 The Group should deliver a Report to the Director, which may include at least the following elements:

- Overview of the applicant Company, including: full identity and location details and any other comments on the Company's business status so far as it may affect the Company's continuing ability to offer GMDSS services;
- General overview of the Company's satellite constellation, ground infrastructure, and full range of communication services;
- Verification of the information provided in relation to the services offered for the GMDSS;
- Evaluation of the services offered for the GMDSS and their degree of compliance with the relevant requirements;
- Conclusions and Recommendations.

3.6 Experts will not normally be required to travel during their term of duty, except that the whole Group, or its elected Co-ordinator, and its Observers may be invited to attend the session of the Advisory Committee that will review its report.

4 Confidentiality

4.1 When the Director convenes a Group of Experts for a particular evaluation and verification exercise, every expert appointed to that Group will be required to guarantee the protection of any confidential information the Group may be required to review, and sign a non-disclosure agreement to that effect.

5 Remuneration and Costs

5.1 Each expert shall be entitled to receive a daily fee, based on the appropriate level of current IMO daily fees for consultancy, for a fixed number of days, plus appropriate expenses as approved by the Organization. No other costs shall be chargeable to the Organization.

5.2 The Organization will recover the full cost of recognizing and approving new satellite services for the GMDSS from the applicant Company concerned through a fixed fee, payable in advance. The fee will be set at a level agreed by the Advisory Committee on the basis of a recommendation by the Director.

IMSO BUDGET FOR 2006

	2004 Actual Out-turn	(1) 2005 Budget	(2) 2005 Forecast Out-turn	(3) 2006 Budget Proposed by Director	(3) 2006 Budget Agreed by Advisory Committee
1. Salaries and other emoluments of staff	323,417	344,250	331,000	341,050	341,050
Basic salaries		201,600	201,570	211,650	211,650
Allowances		23,500	24,040	22,400	22,400
Employer Costs		96,500	86,000	92,000	92,000
Accounting support		22,650	19,390	15,000	15,000
2. Office Maintenance	51,294	50,150	46,327	49,960	49,960
Audit		2,000	2,025	2,500	2,500
Printing/Copying		5,000	5,000	5,000	5,000
Telephone/Fax		2,000	2,250	2,000	2,000
Postage		6,500	5,000	6,500	6,500
Office Supplies		5,000	4,000	5,000	5,000
IT Services		8,500	8,377	8,755	8,755
Inmarsat Service Charge		19,600	19,600	19,600	19,600
Website		1,500	25	555	555
Bank Charges		50	50	50	50
3. Rental	25,422	25,422	25,422	25,422	25,422
4. Travel/Hospitality	22,974	40,500	24,750	41,400	41,400
Travel		34,000	20,000	34,000	34,000
Hospitality		3,000	2,000	3,000	3,000
Parking Fees		2,000	1,500	2,000	2,000
Congestion Fee		1,500	1,250	2,400	2,400
5. Meeting Costs	96,976	39,000	17,000	54,400	77,500
Assembly		21,500	5,000	40,000	60,000
Advisory Committee		10,500	12,000	9,400	12,500
IWG/other meetings		2,000	0	0	0
Translations		5,000	0	5,000	5,000
6. Exceptional Item (1% contingency)		0	0	0	5,353
TOTAL	520,083	499,322	444,499	512,232	540,685

Amount surplus at end 2005 - £54,823